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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MEGAN SCHMITT, DEANA
REILLY, CAROL ORLOWSKY, and
STEPHANIE MILLER BRUN,
individually and on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

YOUNIQUE, LLC,

Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**JOINT [PROPOSED] FINAL
PRETRIAL CONFERENCE ORDER**

Pretrial Conference: February 4, 2019

Trial Date: February 19, 2019

1 Following pretrial proceedings, pursuant to F.R.Civ.P. 16 and L.R. 16,
2 IT IS ORDERED:

3 **1. The Parties Are:**

- 4 A. Plaintiff Megan Schmitt
- 5 B. Plaintiff Deana Reilly
- 6 C. Plaintiff Stephanie Miller Brun
- 7 D. Defendant Younique, LLC.

8 Each of these parties has been served and has appeared. Summary Judgment
9 was granted in Defendant's favor against the claims of Plaintiff Carol Orlowsky on
10 December 21, 2018 (Dkt. 136). All other parties named in the pleadings and not
11 identified in the preceding paragraph are now dismissed.

12 The pleadings which raise the issues are:

- 13 A. Plaintiffs' Second Amended Complaint dated January 4, 2018
14 (Dkt. 58);
- 15 B. Defendant Younique, LLC's Answer to Second Amended Class
16 Action Complaint dated January 18, 2018 (Dkt. 60).

17 **2. Federal jurisdiction and venue are invoked upon these grounds:**

18 Plaintiffs bring class action claims for breach of California, Ohio, Florida and
19 Tennessee state consumer protection and warranty laws and under the federal
20 Magnusson-Moss Warranty Act, 15 U.S.C. § 2310 et seq. Plaintiff Megan Schmitt
21 is a resident of California and the events that gave rise to her claim occurred in this
22 District. The Court has jurisdiction over this action pursuant to the Class Action
23 Fairness Act, 28 U.S.C. § 1332(d). Venue is proper because Plaintiff Megan
24 Schmitt is a resident of this District and the events that gave rise to her claim
25 occurred in this District.

26 For purposes of jurisdiction and venue, there are no disputed facts.

1 **3. The trial is estimated to take 7 days.**

2 **4. The trial is to be a jury trial.**

3 Per the Scheduling Order, at least seven (7) days prior to the trial date the
4 parties shall file and serve by e-mail, fax, or personal delivery: (a) proposed
5 jury instructions as required by L.R. 51-1 and (b) and special questions
6 requested to be asked on voir dire (*i.e.*, by February 12, 2019).

7 **5. The following facts are admitted and require no proof:**

8 A. Megan Schmitt is a citizen of California.

9 B. Megan Schmitt purchased Yunique Moodstruck 3D Fiber Lashes for
10 personal use in 2012.

11 C. Megan Schmitt paid \$29 for the Moodstruck 3D Fiber Lashes.

12 D. Deana Reilly is a citizen of Florida.

13 E. Deana Reilly purchased Yunique Moodstruck 3D Fiber Lashes for
14 personal use in early 2015.

15 F. Deana Really paid \$29 for the Moodstruck 3D Fiber Lashes.

16 G. Stephanie Miller Brun is a citizen of Ohio.

17 H. Stephanie Miller Brun purchased Yunique Moodstruck 3D Fiber
18 Lashes for personal use on November 18, 2014.

19 I. Stephanie Miller Brun was a Yunique presenter and from time to time
20 purchased the Moodstruck 3D Fiber Lashes for resale to her customers.

21 J. Yunique, LLC is a company with its principle place of business in
22 Lehi, Utah.

23 K. Between October 2012 and July 2015 Yunique, LLC sold a mascara
24 called "Yunique Moodstruck 3D Fiber Lashes."

25 L. The Yunique Moodstruck 3D Fiber Lashes consisted of two
26 components, a "transplanting gel" and "natural fibers."

27 M. Dr. May did not opine on the Plaintiffs' individual damages.
28

1 **6. The following facts, though stipulated, shall be without prejudice to any**
2 **evidentiary objection:**

3 (a) Younique sold 459,411 stand-alone units of the Younique
4 Moodstruck 3D Fiber Lashes in California between October 2012 and
5 July 2015.

6 (b) Younique sold 154,146 stand-alone units of the Younique
7 Moodstruck 3D Fiber Lashes in Ohio between October 2012 and July
8 2015.

9 (c) Younique sold 180,404 stand-alone units of the Younique
10 Moodstruck 3D Fiber Lashes in Florida between October 2012 and July
11 2015.

12 (d) Dixie Memmott was the Product Development and Supply
13 Manager at Younique as of January 24, 2014.

14 (e) The retail price for the Moodstruck 3D Fiber Lashes as a stand-
15 alone product was \$29.

16 (f) Presenters purchase a “presenter kit”, use the products in the kit
17 and then post about them across social media platforms such as
18 Facebook and Instagram.

19
20 **7. Elements of Claims:**

21 **Plaintiffs’ Claims and Evidence in Support**

22 **CLAIM ONE: Younique violated the Florida Unfair and Deceptive Trade**
23 **Practices Act (FUDTPA). This claim is brought by Deana Reilly and the**
24 **Florida Class Against Younique, LLC.**

25 The elements to establish a claim under the FUDTPA are “(1) a deceptive act
26 or unfair practice; (2) causation; and (3) actual damages.” Rollins, Inc. v. Butland,
27 951 So. 2d 860, 869 (Fla. Dist. Ct. App. 2006). See Jury Instruction No. 53.
28

i. FUDTPA Element 1: Deceptive Act or Unfair Practice

Evidence in Support

- a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- b. Exhibit 2 (YNQE0000731)
- c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- d. Exhibit 4 (8.11.14 Younique Website Capture)
- e. Exhibit 5 (McFadden Report)
- f. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- g. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)
- h. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- i. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)
- j. Exhibit 10 (YNQE 1872-1897; Ranallo Ex. 17)
- k. Exhibit 11 (Ranallo Ex. 7)
- l. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)
- m. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan Schmitt's Deposition)
- n. Exhibit 14 (Product Ingredients List to Younique Employees)
- o. Exhibit 15 (Defendant Younique, LLC's Answer to Second Amended Complaint)
- p. Testimony of Deana Reilly

ii. FUDTPA Element 2: Causation

Evidence in Support

- a. Testimony of Deana Reilly

iii. FUDTPA Element 3: Actual Damages.

Evidence in Support

- a. Testimony of Deana Reilly
- b. Exhibit 16 (Expert Report and testimony of Don May)
- c. Exhibit 17 (Receipt(s))
- d. Exhibit 30 (YNQE0000345 (sales data))

Plaintiffs will seek attorney fees to the extent they are available by statute.

CLAIM TWO: Younique violated the California Unfair Competition Law (UCL), California Business and Professions Code § 17200 et seq. This claim is brought by Megan Schmitt and the California Class Against Younique, LLC.

The elements to establish Plaintiff's claim under the UCL are: (1) "economic injury" (i.e., a loss or deprivation of money or property sufficient to qualify as an injury-in-fact), and (2) the defendant's unfair business practices caused plaintiff's economic injury. *Pulaski v. Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 985 n.6 (9th Cir. 2015).

i. UCL Element 1: economic injury

Evidence in Support

- a. Testimony of Megan Schmitt
- b. Exhibit 16 (Expert Report and testimony of Don May)
- c. Exhibit 30 (YNQE0000345 (sales data))

ii. UCL Element 2: Unfair Business Practices Caused Injury

Evidence in support of UCL "Unfair" prong:

- a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- b. Exhibit 2 (YNQE0000731)
- c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- d. Exhibit 4 (11.14 Younique Website Capture)

- e. Exhibit 5 (McFadden Report)
- f. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- g. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)
- h. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- i. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)
- j. Exhibit 10 (YNQE 1872-1897; Ranallo Ex. 17)
- k. Exhibit 11 (Ranallo Ex. 7)
- l. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)
- m. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan Schmitt's Deposition)
- n. Exhibit 14 (Product Ingredients List to Younique Employees)

Evidence in support of UCL "Unlawful" Prong:

- a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- b. Exhibit 2 (YNQE0000731)
- c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- d. Exhibit 4 (11.14 Younique Website Capture)
- e. Exhibit 5 (McFadden Report)
- f. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- g. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)
- h. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- i. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)
- j. Exhibit 10 (YNQE 1872-1897; Ranallo Ex. 17)
- k. Exhibit 11 (Ranallo Ex. 7)
- l. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)

1 m. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan
2 Schmitt's Deposition)

3 n. Exhibit 14 (Product Ingredients List to Younique Employees)

4
5 **Evidence in Support of UCL "Fraudulent" Prong:**

6 a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)

7 b. Exhibit 2 (YNQE0000731)

8 c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)

9 d. Exhibit 4 (11.14 Younique Website Capture)

10 e. Exhibit 5 (McFadden Report)

11 f. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)

12 g. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)

13 h. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)

14 i. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)

15 j. Exhibit 10 (YNQE 1872-1897; Ranallo Ex. 17)

16 k. Exhibit 11 (Ranallo Ex. 7)

17 l. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at
18 Stephanie Miller-Brun's Deposition)

19 m. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan
20 Schmitt's Deposition)

21 n. Exhibit 14 (Product Ingredients List to Younique Employees)

22
23 **Evidence in Support of UCL Causation Prong:**

24 a. Testimony of Megan Schmitt

25 **Plaintiffs will seek attorney fees to the extent they are available by statute.**

26
27 **CLAIM THREE: Younique violated the California Consumers Legal Remedies**

Act (CLRA), California Civil Code § 1750 et seq. This claim is brought by Megan Schmitt and the California Class Against Yunique, LLC.

The elements to establish Plaintiff’s claim under the CLRA are “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code § 1770(a). See Jury Instruction No. 46.

i. CLRA Element 1: Unfair or deceptive acts or practices.

Plaintiff alleges that Yunique violated three prongs of the CLRA:

1. Representing that Products have characteristics, uses, or benefits that they do not have, in violation of section 1770(a)(5);
2. Representing that Products are of a particular standard, quality, or grade when they are not, in violation of section 1770(a)(7); and
3. Advertising Products with the intent not to sell them as advertised, in violation of section 1770(a)(9).

Evidence in Support of CLRA 1770 (a)(5) and (a)(7):

- a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- b. Exhibit 2 (YNQE0000731)
- c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- d. Exhibit 4 (11.14 Yunique Website Capture)
- e. Exhibit 5 (McFadden Report)
- f. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- g. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)
- h. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)

- i. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)
- j. Exhibit 10 (YNQE 1872-1897; Ranallo Ex. 17)
- k. Exhibit 11 (Ranallo Ex. 7)
- l. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)
- m. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan Schmitt's Deposition)
- n. Exhibit 14 (Product Ingredients List to Younique Employees)

Evidence in Support of (a)(9)

- a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- b. Exhibit 2 (YNQE0000731)
- c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- d. Exhibit 4 (11.14 Younique Website Capture)
- e. Exhibit 5 (McFadden Report)
- f. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- g. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)
- h. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- i. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)
- j. Exhibit 10 (YNQE 1872-1897; Ranallo Ex. 17)
- k. Exhibit 11 (Ranallo Ex. 7)
- l. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)
- m. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan Schmitt's Deposition)
- n. Exhibit 14 (Product Ingredients List to Younique Employees)

ii. CLRA Element 2: Causation

Evidence in support of CLRA Causation

- a. Testimony of Megan Schmitt
- b. Exhibit 16 (Report of Don May)
- c. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- d. Exhibit 2 (YNQE0000731)
- e. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- f. Exhibit 4 (11.14 Yunique Website Capture)
- g. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- h. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)
- i. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan Schmitt's Deposition)

iii. CLRA Element 3: Damages

Evidence In support of CLRA Damages

- a. Testimony of Megan Schmitt
- b. Exhibit 16 (Expert Report and testimony of Don May)
- c. Exhibit 30 (YNQE0000345 (sales data))

Plaintiffs will seek attorney fees to the extent they are available by statute.

CLAIM FOUR: Yunique breached its express warranty under Ohio Rev. Code § 1302.26. This claim is brought by Stephanie Miller Brun and the Ohio Class Against Yunique, LLC

Elements of Ohio Express Warranty: 1. Existence of Warranty; 2. Goods did not comply with warranty; and 3. Failure to comply with warranty caused damage.

See Jury Instruction No. 50.

**i. Ohio Express Warranty Element 1: Existence of Express
Warranty**

Evidence in Support

- a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- b. Exhibit 2 (YNQE0000731)
- c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- d. Exhibit 4 (11.14 Yunique Website Capture)
- e. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- f. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at
Stephanie Miller-Brun's Deposition)
- g. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan
Schmitt's Deposition)

**ii. Ohio Express Warranty Element 2: Goods did not comply with
Warranty**

Evidence in Support

- a. Exhibit 5 (McFadden Report)
- b. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- c. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)

**iii. Ohio Express Warranty Element 3: Failure to comply caused
injury**

Evidence in Support of Causation Prong:

- a. Testimony of Stephanie Miller Brun

Evidence in Support of Injury Prong:

- a. Testimony of Stephanie Miller Brun
- b. Exhibit 16 (Expert Report of Don May)
- c. Exhibit 30 (YNQE0000345 (sales data))
- d. Exhibits 18-34 (Receipt(s))

CLAIM FIVE: Younique breached its implied warranty under Ohio Rev. Code § 1302.27(6). This claim is brought by Stephanie Miller Brun and the Ohio Class Against Younique, LLC.

Elements of Ohio Breach of Implied Warranty: Existence of Promises or Affirmations of Fact, Falsity of Promises or Affirmations of Fact, and Damages. See Jury Instruction No. 49.

i. Ohio Implied Warranty Element 1: Existence of Promises or Affirmations of Fact

Evidence in Support

- a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- b. Exhibit 2 (YNQE0000731)
- c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- d. Exhibit 4 (11.14 Younique Website Capture)
- e. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- f. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)
- g. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan Schmitt's Deposition)

ii. Ohio Implied Warranty Element 2: Falsity of Promises or

Affirmations of Fact

Evidence in Support

- a. Exhibit 5 (McFadden Report)
- b. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- c. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)
- d. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)
- e. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at Stephanie Miller-Brun's Deposition)
- f. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan Schmitt's Deposition)

iii. Ohio Implied Warranty Element 3: Causation and Injury
Evidence in Support of Ohio Implied Warranty Causation
Prong

- a. Testimony of Stephanie Miller Brun

Evidence in Support of Ohio Implied Warranty Injury Prong

- a. Testimony of Stephanie Miller Brun
- b. Exhibit 16 (Expert Report and testimony of Don May)
- c. Exhibit 30 (YNQE0000345 (sales data))
- d. Exhibits 18-34 (Receipt(s))

CLAIM SIX: Younique breached the federal Magnusson-Moss Warranty Act, 15 U.S.C. § 2301 et seq. This claim is brought by Stephanie Miller Brun and the Ohio Class Against Younique, LLC.

See Jury Instruction No. 52.; *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (“[T]he claims under the Magnuson–Moss Act stand or fall

1 with his express and implied warranty claims under state law.”).

2 **Evidence in Support**

- 3 a. Exhibit 1 (YNQE0000994; Ranallo Ex. 4)
- 4 b. Exhibit 2 (YNQE0000731)
- 5 c. Exhibit 3 (YNQE 1291-1296; Ranallo Ex. 8)
- 6 d. Exhibit 4 (11.14 Younique Website Capture)
- 7 e. Exhibit 8 (YNQE0001211; Ranallo Ex. 9)
- 8 f. Exhibit 5 (McFadden Report)
- 9 g. Exhibit 6 (YNQE0001014-1018; Ranallo Ex. 15)
- 10 h. Exhibit 7 (YNQE0001239-1240; Ranallo Ex. 5)
- 11 i. Testimony of Stephanie Miller Brun
- 12 j. Exhibit 16 (Expert Report and testimony of Don May)
- 13 k. Exhibits 18-34 ((Receipt(s))
- 14 l. Exhibit 9 (YNQE0001079-1081; Ranallo Ex. 14)
- 15 m. Exhibit 12 (Five Fiberlash Products Produced by Plaintiff at
- 16 Stephanie Miller-Brun’s Deposition)
- 17 n. Exhibit 13 (Fiberlash Product Produced by Plaintiff at Megan
- 18 Schmitt’s Deposition)
- 19 o. Exhibit 30 (YNQE0000345 (sales data))

20

21 **Plaintiffs will seek attorney fees to the extent they are available by statute.**

22

23 **Younique’s Defenses and Evidence in Support**

24 **Third Affirmative Defense: Statute of Limitations.** Plaintiffs’ purported claims

25 are barred, in whole or in part, to the extent Plaintiffs seek relief for any purported

26 claims, on their own behalf or on behalf of others, that were not brought before the

27 expiration of the applicable statute of limitations, including but not limited to:

28

1 California Business and Professions Code section 17208 (4 years); California Civil
2 Code section 1783 (3 years); Fla. Stat. section 501.207 (4 years); Ohio Rev. Code
3 sections 1302.98 (4 years). *See also* Jury Instruction No. 55.

4 **Evidence in support:**

- 5 (1) Exhibit 30 (YNQE0000345 (sales data))
6 (2) Schmitt's testimony
7 (3) Exhibit 17 (Reilly's receipt)
8 (4) Exhibit 31 (Brun's receipt dated November 18, 2014)
9

10 **Fourth Affirmative Defense: Lack of Standing.**

11 **Article III Standing.** To establish standing under Article III, the plaintiff
12 must show: (1) injury in fact; (2) causation; and (3) redressability. *Lujan v.*
13 *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). To establish an injury in fact, a
14 plaintiff must demonstrate the "invasion of a legally protected interest which is (a)
15 concrete and particularized; and (b) actual or imminent, not conjectural or
16 hypothetical." *Id.* at 560 (internal cites omitted). "By particularized," it is meant
17 "that the injury must affect the plaintiff in a personal and individual way." *Id.* at
18 560 n.1.

19 **Evidence in support:**

- 20 (a) Schmitt's testimony
21 (b) Brun's testimony
22 (c) Reilly's testimony
23 (d) Phillips' testimony
24 (e) Exhibits 77, 79, 80, 82, 83 (Orlowsky Depo Exs. 70, 74, 75, 77, 78)
25 (f) Exhibits 56-68 (Brun Depo Exs. 57-60)
26

27 **California's Unfair Competition Law.** Only a "person who has suffered
28

1 injury in fact and has lost money or property as a result of” a UCL violation may
2 bring an action for violation. Cal. Bus. & Prof. Code §§ 17204. The phrase “as a
3 result of” means “caused by” and “requires a showing of a causal connection or
4 reliance on the alleged misrepresentation,” as “reliance is the causal mechanism of
5 fraud.” *Kwikset Corp. v. Super. Ct.*, 51 Cal.4th 310, 326 (2011) (internal cites
6 omitted). Reliance is proved by showing that the defendant's misrepresentation or
7 nondisclosure was “an immediate cause” of the plaintiff's injury-producing conduct.
8 *In re Tobacco II Cases*, 46 Cal.4th 298, 326 (2009). A plaintiff may establish that
9 the defendant's misrepresentation is an “immediate cause” of the plaintiff's conduct
10 by showing that in its absence the plaintiff “in all reasonable probability” would not
11 have engaged in the injury-producing conduct. *Id.*

12 **Evidence in support:**

13 (a) Schmitt’s testimony
14

15 **California’s Consumers Legal Remedies Act.** Consumers “seeking to
16 recover damages under the CLRA based on a fraud theory must prove actual
17 reliance on the misrepresentation and harm.” *Sateriale v. R.J. Reynolds Tobacco*
18 *Co.*, 697 F.3d 777, 793-94 (9th Cir. 2012); accord, *Kwikset*, 51 Cal.4th at 326-27.
19 “Actual reliance” means that the “misrepresentation was an immediate cause of the
20 injury-producing conduct.” *Kwikset*, 51 Cal.4th at 326-27.

21 **Evidence in support:**

22 (a) Schmitt’s testimony
23

24 **Florida’s Deceptive And Unfair Trade Practices Act.** To establish a claim
25 under the FDUTPA, there must be “(1) a deceptive act or unfair practice; (2)
26 causation; and (3) actual damages.” *Rollins, Inc. v. Butland*, 951 So.2d 860, 869
27 (Fla. Dist. Ct. App. 2006). There must be “probable, not possible, deception” that is
28

1 “likely to cause injury to a reasonable relying consumer.” *Zlotnick v. Premier Sales*
2 *Group, Inc.*, 480 F.3d 1281, 1284 (11th Cir. 2007).

3 **Evidence in support:**

4 (a) Reilly’s testimony

5
6 **Ohio Express Warranty Law.** Ohio express warranty law requires “(1) a
7 warranty existed; (2) the product failed to perform as warranted; (3) plaintiff
8 provided the defendant with reasonable notice of the defect; and (4) plaintiff
9 suffered injury as a result of the defect.” *Caterpillar Fin. Servs. Corp. v. Harold*
10 *Tatman & Son’s, Enters.*, 2015-Ohio-4884, 11 (Ct. App. 2015). Representations
11 may become a warranty if they are “the basis for the bargain.” O.R.C. Ann. §
12 1302.26; *Bobb Forest Prods. v. Morbark Indus.*, 151 Ohio App. 3d 63, 81 (Ct. App.
13 2002).

14 **Evidence in support:**

15 (a) Brun’s testimony

16
17 **Ohio Implied Warranty Law.** Ohio implied warranty law requires, “not
18 only the existence of the warranty but the fact that the warranty was broken and that
19 the breach of the warranty was the proximate cause of the loss sustained.” *Taylor v.*
20 *Boardman Twp. Local Sch. Dist. Bd. of Educ.*, 2009-Ohio-6528, *25 (Ct. App.
21 2009).

22 **Evidence in support:**

23 (a) Brun’s testimony

24
25 **Fifth Affirmative Defense: Compliance with Statutes, Regulations, and/or**
26 **Industry Standards.** To the extent that Younique engaged in any of the activities
27 alleged in this Pretrial Conference Order, those activities were in compliance with,
28

1 and pursuant to, statutes, government regulations and/or industry standards in
2 existence at the time of the activities.

3 **Evidence in support:**

- 4 (a) Exhibits 28, 91-99 (purchase orders and product reference libraries)
5 (b) Exhibit 119 (Senos manufacturing agreement)
6

7 **Twelfth Affirmative Defense: Laches.** A party asserting a laches, “must show
8 that it suffered prejudice as a result of the plaintiffs’ unreasonable delay in filing
9 suit.” *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 835 (9th Cir.
10 2002).

11 **Evidence in support:**

- 12 (a) Schmitt’s testimony
13 (b) Brun’s testimony
14 (c) Reilly’s testimony
15 (d) Orlowsky’s testimony
16 (e) Ranallo’s testimony
17

18 **Fourteenth Affirmative Defense: Unjust Enrichment.** The elements for a claim
19 of unjust enrichment are (1) receipt of a benefit and (2) unjust retention of the
20 benefit at the expense of another. *Lectrodryer v. Seoulbank*, 77 Cal.App.4th 723,
21 726 (2000); accord, *Media Services Group, Inc. v. Bay Cities Comm., Inc.*, 237 F.3d
22 1326, 1330-31 (11th Cir. 2001).

23 **Evidence in support:**

- 24 (a) Brun’s testimony
25 (b) Reilly’s testimony
26 (c) Orlowsky’s testimony
27 (d) Phillips’ testimony
28

- (e) Exhibits 77, 79, 80, 82, 83 (Orlowsky Depo Exs. 70, 74, 75, 77, 78)
- (f) Exhibits 65-68 (Brun Depo Exs. 57-60 (the presenter agreements))
- (g) Exhibits 18-26, 31 (Brun's receipts)
- (h) Exhibit 69 (Orlowsky's receipts)
- (i) Exhibit 17 (Reilly's receipt)
- (j) Schmitt's testimony

Fifteenth Affirmative Defense: Offset. "[E]ither party to a transaction involving mutual debts and credits can strike a balance, holding himself owing or entitled only to the net difference." *Garg v. People ex rel. State Bd. of Equalization*, 53 Cal.App.4th 199, 211-12 (1997) (citing *Jess v. Herrmann*, 26 Cal.3d 131, 142 (1979)).

Evidence in support:

- (a) Brun's testimony
- (b) Reilly's testimony
- (c) Orlowsky's testimony
- (d) Phillips' testimony
- (e) Exhibits 77, 79, 80, 82, 83 (Orlowsky Depo Exs. 70, 74, 75, 77, 78)
- (f) Exhibits 65-68 (Brun Depo Exs. 57-60 (the presenter agreements))
- (g) Exhibits 18-26, 31 (Brun's receipts)
- (h) Exhibit 69 (Orlowsky's receipts)
- (i) Exhibit 17 (Reilly's receipt)
- (j) Schmitt's testimony

Prayer For Attorneys' Fees. If Younique is the prevailing party, Younique contends it is entitled to its attorney's fees and costs. Fla. Stat. § 501.2105. Younique further contends that the claims asserted by Plaintiffs are not brought in

1 good faith, thereby entitling Younique to an award of its reasonable attorneys' fees
2 under the CLRA. Cal. Civ. Code 1780(e).

3
4 **8. In view of the admitted facts and the elements required to establish the**
5 **claims and affirmative defenses, the following issues remain to be tried:**

6 **I. The parties agree that the following issues remain to be tried:**

- 7 A. Whether Plaintiff Schmitt relied on the "Natural Fibers" and "100%
8 Natural Green Tea Fibers" representations on the Moodstruck 3D Fiber
9 Lash label or Younique's website in making her purchasing decision.
- 10 B. Whether Plaintiff Brun relied on the "Natural Fibers" and "100% Natural
11 Green Tea Fibers" representations on the Moodstruck 3D Fiber Lash label
12 or Younique's website in making her purchasing decision.
- 13 C. Whether Plaintiff Reilly relied on the "Natural Fibers" and "100% Natural
14 Green Tea Fibers" representations on the Moodstruck 3D Fiber Lash label
15 or Younique's website in making her purchasing decision.
- 16 D. Whether Class Members relied on the "Natural Fibers" and "100% Natural
17 Green Tea Fibers" representations on the Moodstruck 3D Fiber Lash label
18 or Younique's website in making their purchasing decisions.
- 19 E. If Plaintiff Schmitt was damaged, what is the difference between what she
20 paid for the Younique Moodstruck 3D Fiber Lashes and the value of the
21 Younique Moodstruck 3D Fiber Lashes as received.
- 22 F. If Plaintiff Brun was damaged, what is the difference between what she
23 paid for the Younique Moodstruck 3D Fiber Lashes and the value of the
24 Younique Moodstruck 3D Fiber Lashes as received.
- 25 G. If Plaintiff Reilly was damaged, what is the difference between what she
26 paid for the Younique Moodstruck 3D Fiber Lashes and the value of the
27 Younique Moodstruck 3D Fiber Lashes as received.

- 1 H. If Class Members were damaged, what is the difference between what the
2 Class Members paid for the Yunique Moodstruck 3D Fiber Lashes and
3 the value of the Yunique Moodstruck 3D Fiber Lashes as received.
- 4 I. Yunique products are only sold online and/or through independent
5 contractors (called “Presenters”), and not in stores.
- 6 J. Presenters receive commissions based on the volume of sales achieved.
7 Commissions range between 20-30%. A presenter can also earn a
8 commission of 3-6% based on the sales the presenter and her downline
9 generate.
- 10 K. Presenters earn commissions on all of their purchases, including their
11 personal purchases, except for when they use half-price coupons.
- 12 L. “Y cash” and half-price coupons are rewards that Yunique offers to
13 anyone who hosts an online “party.” The host receives points based on the
14 number of sales that are made at the party, and the points total translates to
15 a dollar amount of Y cash. The host can use Y cash in conjunction with
16 any future purchase to reduce the cost of the purchase. Hosts can also earn
17 half-price coupons, which are applied to future product purchases to
18 reduce the cost of those purchases. Half-price coupons are issued for
19 future purchase of a single item.
- 20 M. When a customer applies a half-price coupon, the discount applies to a
21 single product.
- 22 N. When a customer applies Y cash, the Y cash reduces the total cost of all
23 items in the shopping cart. If a customer has enough Y cash, the customer
24 can reduce the total cost of the purchase to \$0.
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II. Plaintiff contends that the following issues remain to be tried:

- O. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers” representations on the label or website or social media of the Moodstruck 3D Fiber Lashes falsely represented the ingredients of the fiber lash component of the product.
- P. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers” representations on the Moodstruck 3D Fiber Lash label or website or social media was material to Plaintiff Schmitt when she made her purchasing decision.
- Q. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers” representations on the Moodstruck 3D Fiber Lash label or website or social media was material to Plaintiff Brun when she made her purchasing decision.
- R. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers” representations on the Moodstruck 3D Fiber Lash label or website or social media was material to Plaintiff Reilly when she made her purchasing decision.
- S. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers” representations on the Moodstruck 3D Fiber Lash label or website or social media was material to Class Members when they made their purchasing decision.
- T. Whether a reasonable consumer would have been deceived by the “Natural Fibers” and “100% Natural Green Tea Fibers” representations on the Moodstruck 3D Fiber Lash label or website or social media.
- U. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers” representations on the Moodstruck 3D Fiber Lash label or website or social media caused Plaintiff Schmitt the asserted harm.

1 V. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
2 representations on the Moodstruck 3D Fiber Lash label or website or
3 social media caused Plaintiff Brun the asserted harm.

4 W. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
5 representations on the Moodstruck 3D Fiber Lash label or website or
6 social media caused Plaintiff Reilly the asserted harm.

7 X. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
8 representations on the Moodstruck 3D Fiber Lash label or website or
9 social media caused the Class Members the asserted harm.

10 Y. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
11 representations on the Moodstruck 3D Fiber Lash label or website or
12 social media became a basis for the bargain for Plaintiff Brun.

13 Z. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
14 representations on the Moodstruck 3D Fiber Lash label or website or
15 social media became a basis for the bargain for the Ohio Class.

16 AA. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
17 representations on the Moodstruck 3D Fiber Lash label or website or
18 social media was the cause of damage Plaintiffs and the Class Members.

19 BB. Deana Reilly saw the “Natural Fibers” and “100% Natural Green Tea
20 Fibers” representations before she purchased the Yunique Moodstruck
21 3D Fiber Lashes.

22 CC. Megan Schmitt saw the “Natural Fibers” and “100% Natural Green Tea
23 Fibers” representations before she purchased the Yunique Moodstruck
24 3D Fiber Lashes.

25 DD. Megan Schmitt saw the “Natural Fibers” and “100% Natural Green Tea
26 Fibers” representations before she purchased the Yunique Moodstruck
27 3D Fiber Lashes.
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1 EE. Stephanie Miller Brun saw the “Natural Fibers” and “100% Natural
2 Green Tea Fibers” representations before she purchased the Younique
3 Moodstruck 3D Fiber Lashes.

4 FF. Stephanie Miller Brun purchased the Younique Moodstruck 3D Fiber
5 Lashes on November 14, 2014 for personal use.

6 GG. Stephanie Miller Brun purchased other Younique Moodstruck 3D Fiber
7 Lashes on other dates for personal use.

8 HH. The “Natural Fibers” and “100% Natural Green Tea Fibers” language
9 was an important factor in Deana Reilly’s purchase decision.

10 II. The “Natural Fibers” and “100% Natural ... Fibers” language was an
11 important factor in Megan Schmitt’s purchase decision.

12 JJ. Deana Reilly believes the Younique Moodstruck 3D Fiber Lashes she
13 bought was worth less than what she paid for it.

14 KK. Megan Schmitt believes the Younique Moodstruck 3D Fiber Lashes
15 she bought was worth less than what she paid for it.

16 LL. Stephanie Miller Brun believes the Younique Moodstruck 3D Fiber
17 Lashes she bought was worth less than what she paid for it.

18 MM. The Younique Moodstruck 3D Fiber Lashes made Megan Schmitt’s
19 eyes water.

20 NN. Stephanie Miller Brun purchased Younique Moodstruck 3D Fiber
21 Lashes for personal use on November 18, 2014 and on multiple other
22 occasions.

23 OO. Whether Stephanie Miller Brun paid \$29 for the Moodstruck 3D Fiber
24 Lashes.

25 PP. Whether Younique represented on the label of the Younique
26 Moodstruck 3D Fiber Lashes that the fibers were “Natural Fibers” and
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were composed of either “100% Natural Green Tea Fibers taken from
Campanulaceae of Green Tea” or “100% Natural Green Tea Fibers.”

QQ. Whether the following are accurate representations of the Moodstruck
3D Fiber Lashes labels:



1 RR. Younique stated that the fibers in the Younique Moodstruck 3D Fiber
2 Lashes were “Natural Fibers” and composed of “100% Natural Green Tea
3 Fibers” on its website.

4 SS. Purchasers of the Moodstruck 3D Fiber Lashes had to place their orders
5 for the Moodstruck 3D Fiber Lashes through Younique’s website.

6 TT. Melanie Huscroft is the co-founder and Vice President of Marketing
7 and Sales of Younique.

8 UU. In January 2014, Younique learned through an email from its Chinese
9 vendor forwarded to Melanie Huscroft, the co-founder and Vice President
10 of Marketing and Sales of Younique, that the product was composed of
11 “polyvinyl alcohol fiber” rather than natural green tea fibers. Despite
12 learning this, Younique continued to sell the product with the same
13 “Natural Fibers” and “100% natural green tea fibers” representations
14 through July of 2015.

15 VV. A reasonable consumer would not consider nylon or plastic to be
16 “natural.”

17 **III. Defendant contends that the following issues remain to be tried:**

18 WW. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
19 representations on the label of the Moodstruck 3D Fiber Lashes falsely
20 represented the ingredients of the fiber lash component of the product.

21 XX. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
22 representations on the Moodstruck 3D Fiber Lash label was material to
23 Plaintiff Schmitt when she made her purchasing decision.

24 YY. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
25 representations on the Moodstruck 3D Fiber Lash label was material to
26 Plaintiff Brun when she made her purchasing decision.

1 ZZ. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
2 representations on the Moodstruck 3D Fiber Lash label was material to
3 Plaintiff Reilly when she made her purchasing decision.

4 AAA. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
5 representations on the Moodstruck 3D Fiber Lash label was material to
6 Class Members when they made their purchasing decision.

7 BBB. Whether a reasonable consumer would have been deceived by the
8 “Natural Fibers” and “100% Natural Green Tea Fibers” representations on
9 the Moodstruck 3D Fiber Lash label.

10 CCC. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
11 representations on the Moodstruck 3D Fiber Lash label caused Plaintiff
12 Schmitt the asserted harm.

13 DDD. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
14 representations on the Moodstruck 3D Fiber Lash label caused Plaintiff
15 Brun the asserted harm.

16 EEE. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
17 representations on the Moodstruck 3D Fiber Lash label caused Plaintiff
18 Reilly the asserted harm.

19 FFF. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
20 representations on the Moodstruck 3D Fiber Lash label caused the Class
21 Members the asserted harm.

22 GGG. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
23 representations on the Moodstruck 3D Fiber Lash label became a basis for
24 the bargain for Plaintiff Brun.

25 HHH. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
26 representations on the Moodstruck 3D Fiber Lash label became a basis for
27 the bargain for the Ohio Class.

1 III. Whether the “Natural Fibers” and “100% Natural Green Tea Fibers”
2 representations on the Moodstruck 3D Fiber Lash label damaged Plaintiffs
3 and the Class Members.

4 **9.** Plaintiffs’ position is that since their motion seeking additional time for
5 discovery based on Defendant’s failure to provide certain documents is still
6 pending (Dkt. 68) discovery is not complete. Defendant states that discovery
7 is closed, and, as to it being complete, contends that Plaintiffs and their
8 expert, Dr. Donald M. May, Ph.D., did not comply with Rule 26 (Dkt. 146).

9 **10. All disclosures under F.R.Civ.P 26(a)(3) have been made.**

10 The joint exhibit list of the parties are being contemporaneously filed under
11 separate cover as required by L.R. 16-6.1. Unless all parties agree that an exhibit
12 shall be withdrawn, all exhibits will be admitted without objection at trial except
13 those exhibits listed below:

14 Plaintiff objects to Exhibit Nos. 31-32, 34, 38, 39, 65-86, 88-106, 119, 121.

15 Defendant objects to Exhibit Nos. 1-11, 14-16, 18-27, and 29-30.

16 **Plaintiffs’ Objections To Exhibits:**

Ex.	Description	Objections
17 31	3/14/18; Plaintiffs' Response to Defendants Requests for Production Propounded to Plaintiff Stephanie Miller Brun, Set No One [Brun Dep Exh 2] <i>Offered for limited purposes only to establish failure to produce other discovery documents</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
23 32	3/14/18; Letter with attachments from Sultzer Law Group to Sheppard Mullin transmitting plaintiffs’ discovery responses [Brun Dep Exh 3] <i>Offered for limited purposes only to establish failure to produce other discovery documents</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.

34	Lash Enhancer Photograph with Insert and Packaging [Brun Dep Exh 8] <i>Offered for limited purpose only.</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
38	3/14/18; Plaintiffs' Response to Defendants Special Interrogatories Propounded to Plaintiff Stephanie Miller Brun, Set No One [Brun Dep Exh 22] <i>Offered for limited purpose only.</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
39	5/18/18; Plaintiffs' Response to Defendants Requests for Production Propounded to Plaintiff Stephanie Miller Brun, Set No Two [Brun Dep Exh 23] <i>Offered for limited purpose only.</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents..
65	12/15/14; Yunique Independent Presenter Agreement Effective December 15, 2014 [YNQE0000053-YNQE0000107] [Brun Dep Exh 57]	Object to relevance, even if relevant more likely to lead to prejudice, confusion or waste of time (FRE 403).
66	9/20/16; Yunique Independent Presenter Agreement [YNQE0000001-YNQE0000052] [Brun Dep Exh 58]	Object to relevance, even if relevant more likely to lead to prejudice, confusion or waste of time (FRE 403).
67	The Yunique Independent Presenter Agreement [YNQE0000108-YNQE0000145] [Brun Dep Exh 59]	Object to relevance, even if relevant more likely to lead to prejudice, confusion or waste of time (FRE 403).
68	The Yunique Independent Presenter Agreement [YNQE0000146-YNQE0000197] [Brun Dep Exh 60]	Object to relevance, even if relevant more likely to lead to prejudice, confusion or waste of time (FRE 403).

69	6/26/18; Email from Adam Gonnelli to Jonathan Moss and Sascha Henry transmitting Orlowsky receipts [Orlowsky Dep Exh 61]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
70	1/27/15; Screen shot identified by Orlowsky as commissions [Orlowsky Dep Exh 63]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
71	2/12/15; Orlowsky Instagram post [Orlowsky Dep Exh 64]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
72	4/22/15; Orlowsky Instagram post [Orlowsky Dep Exh 65]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
73	5/20/15; Orlowsky Instagram post [Orlowsky Dep Exh 66]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.

1	74	6/3/15; Orlowsky Instagram post [Orlowsky Dep Exh 67]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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5	75	7/6/15; Orlowsky Instagram post [Orlowsky Dep Exh 68]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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10	76	7/7/15; Orlowsky Instagram post [Orlowsky Dep Exh 69]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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15	77	7/9/15; Orlowsky Instagram post [Orlowsky Dep Exh 70]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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20	78	8/5/15; Orlowsky Instagram post [Orlowsky Dep Exh 73]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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1	79	8/6/15; Orlowsky Instagram post [Orlowsky Dep Exh 74]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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5	80	8/8/15; Orlowsky Instagram post [Orlowsky Dep Exh 75]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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10	81	8/8/15; Orlowsky Instagram post [Orlowsky Dep Exh 76]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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15	82	10/4/15; Orlowsky Instagram post [Orlowsky Dep Exh 77]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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20	83	10/14/15; Orlowsky Instagram post [Orlowsky Dep Exh 78]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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1	84	11/13/14; Orlowsky Instagram post [Orlowsky Dep Exh 79]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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5	85	12/7/14; Orlowsky Instagram post [Orlowsky Dep Exh 80]	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.
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10	86	8/27/12; Email from Siz Plus to Melanie Huscroft [YNQE001153-YNQE0001173]	Incomplete document, no objections if redactions removed.
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12	88	9/23/13; Younique purchase order to Six Plus Trade Co [YNQE0002255-YNQE0002255] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
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15	89	10/28/13; Younique purchase order to Six Plus Trade Co [YNQE0002330-YNQE0002333] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
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18	90	11/8/13; Younique purchase order to Six Plus Trade Co [YNQE0002155-YNQE0002158] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
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21	91	11/12/13; Younique purchase order to Senos Marketing Limited [YNQE0002306-YNQE0002309] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
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23	92	11/12/13; Younique purchase order to Senos Marketing Limited [YNQE0002310-YNQE0002313] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
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26	93	11/25/13; Younique purchase order to Senos Marketing Limited [YNQE0002249-YNQE0002252] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
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94	11/25/13; Yunique purchase order to Senos Marketing Limited [YNQE0002284-YNQE0002287] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
95	11/25/13; Yunique purchase order to Senos Marketing Limited [YNQE0002297-YNQE0002300] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
96	11/25/13; Yunique purchase order to Senos Marketing Limited [YNQE0002169-YNQE0002172] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
97	12/16/13; Yunique purchase order to Senos Marketing Limited [YNQE0002916-YNQE0002919] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
98	12/16/13; Yunique purchase order to Senos Marketing Limited [YNQE0002090-YNQE0002093] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
99	12/16/13; Yunique purchase order to Senos Marketing Limited [YNQE0002179-YNQE0002182] [Ranallo's PMK Dep Binder]	Incomplete document, no objections if redactions removed.
100	3/14/18; Plaintiffs' Response to Defendants Requests for Production Propounded to Plaintiff Deana Reilly, Set No. One [Reilly Dep Exh 97] <i>Offered for limited purpose</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
101	5/18/18; Plaintiffs' Response to Defendant's Requests for Production Propounded to Plaintiff Deana Reilly, Set No. Two [Reilly Dep Exh 98] <i>Offered for limited purpose</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents..

102	3/14/18; Plaintiffs' Response to Defendants Special Interrogatories Propounded to Plaintiff Deana Reilly, Set No. One [Reilly Dep Exh 99] <i>Offered for limited purpose</i>	Plaintiffs' Objection: Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
103	2/14/18; Defendant Younique, LLC's Requests for Production Propounded to Plaintiff Megan Schmitt, Set No. One [Schmitt Dep Exh 101] <i>Offered for limited purpose</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
104	3/17/18; Plaintiffs' Response to Defendants Requests for Production Propounded to Plaintiff Megan Schmitt, Set No. One [Schmitt Dep Exh 102] <i>Offered for limited purpose</i>	Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
105	5/18/18; Plaintiffs' Response to Defendant's Requests for Production Propounded to Plaintiff Megan Schmitt, Set No. Two [Schmitt Dep Exh 104] <i>Offered for limited purpose</i>	Plaintiffs' Objection: Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.

106	3/14/18; Plaintiffs' Response to Defendants Special Interrogatories Propounded to Plaintiff Megan Schmitt, Set No. One [Schmitt Dep Exh 105] <i>Offered for limited purpose.</i>	Plaintiffs' Objection: Any alleged failure to produce documents in discovery is not an issue that is properly before the jury. Defendant has not made any motion in limine for a negative inference regarding any failure to produce other discovery documents.
119	Senos Manufacturing Agreement [YNQE0003081-YNQE0003087]	Incomplete document, no objections if redactions removed.
121	Orlowsky YouTube video, https://www.youtube.com/watch?v=_N_1UedBZpY	Object to relevance. Orlowsky and all Tennessee claims are excluded. Further object to lack of foundation, and that even if relevant more likely to lead to prejudice, confusion or waste of time.

Defendant's Objections To Exhibits:

Ex.	Description	Objections
1	YNQE0000994 (Product Label) (Ranallo Ex. 4)	Lacks foundation; unauthenticated; Incomplete document
2	YNQE0000731 (Product Label)	Lacks foundation; unauthenticated; Incomplete document.
3	YNQE 1291-1296 (labels email attachment from October 2014) (Ranallo Ex. 8)	Lacks foundation; unauthenticated; email is hearsay
4	8.11.14 Younique Website Capture (Ex. 3 to Cert. Motion)	Lacks foundation; unauthenticated; document not disclosed during discovery
5	Jeff McFadden Report	Objections set forth in Younique's MIL #2
6	YNQE0001014- 1018 (1.25.14 Email Re: Product Ingredients from Dixie Memmot to Melanie Huscroft w/ product ingredient list from Six Plus) (Ranallo Ex. 15)	Lacks foundation; unauthenticated; hearsay

Ex.	Description	Objections
7	YNQE0001239-1240 (March 2014 Email Re Green Tea classification) (Ranallo Ex. 5)	Lacks foundation; unauthenticated; hearsay
8	YNQE 1211 (Product Insert) (Ranallo Ex. 9)	Lacks foundation; unauthenticated
9	YNQE0001079-1081 (October 2013 Emails discussing dye in the Product) (Ranallo Ex. 14)	Lacks foundation; unauthenticated; hearsay
10	YNQE 1872-1897 (Presentation) (Ranallo Ex. 17)	Lacks foundation; unauthenticated
11	Photo of Product Packaging (Ranallo Ex. 7)	Lacks foundation; unauthenticated
14	Document with Product Ingredients Sent to Younique Employees (Ex. 4 to Cert Motion)	Lacks foundation; unauthenticated; hearsay
15	1/18/18; Answer to Second Amended Complaint	Lacks foundation; hearsay
16	December 12, 2018 Report of Donald May	Objections set forth in Younique's MIL #1
18	Computer screen capture of Younique order confirmation, Order Number 15493092 for Stephanie Brun (Document described as having an identifier of SMB007JPG contained in the email to which it was attached) [Brun Dep Exh 4]	Object for relevance, to extent these aren't personal use purchases, and related to products not at issue in this litigation. Incomplete document.
19	Computer screen capture of Younique order confirmation, Order Number 2382420 for Stephanie Brun (Document described as having an identifier of SMB008JPG contained in the email to which it was attached) [Brun Dep Exh 12]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.
20	Computer screen capture of Younique order confirmation, Order Number 2742919 for Stephanie Brun (Document described as having an identifier of SMB009JPG contained in the email to which it was attached) [Brun Dep Exh 13]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.

Ex.	Description	Objections
21	Computer screen capture of Younique order confirmation (Document described as having an identifier of SMB010JPG contained in the email to which it was attached) [Brun Dep Exh 14]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.
22	Computer screen capture of Younique order confirmation, Order Number 2844877 for Stephanie Brun (Document described as having an identifier of SMB011JPG contained in the email to which it was attached) [Brun Dep Exh 15]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.
23	Computer screen capture of Younique order confirmation, Order Number 3263041 for Stephanie Brun (Document described as having an identifier of SMB012JPG contained in the email to which it was attached) [Brun Dep Exh 16]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.
24	Computer screen capture of Younique order confirmation, Order Number 3262892 for Stephanie Brun (Document described as having an identifier of SMB013JPG contained in the email to which it was attached) [Brun Dep Exh 17]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.
25	Computer screen capture of Younique order confirmation, Order Number 3701906 for Stephanie Brun (Document described as having an identifier of SMB014JPG contained in the email to which it was attached) [Brun Dep Exh 18]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.
26	Computer screen capture of Younique order confirmation, Order Number 4583431 for Stephanie Brun (Document described as having an identifier of SMB016JPG contained in the email to which it was attached) [Brun Dep Exh 20]	Object for relevance, to extent these aren't personal use purchases. Incomplete document.
27	1/4/18; Second Amended Class Action Complaint [Brun Dep Exh 5]	Hearsay

Ex.	Description	Objections
29	Computer Screen Capture of Yunique Presenters Guide in use during 2015.	Lacks foundation; unauthenticated; hearsay; relevance; not produced in discovery
30	YNQE0000345 (Sales Data Oct. 2012 – Nov. 2015)	Irrelevant to extent reflects sales past the statute of limitations

11. Witness lists of the parties are being contemporaneously filed with the Court. Only the witnesses identified in the lists will be permitted to testify (other than solely by impeachment)

Each party intending to present evidence by way of deposition testimony has or will mark such depositions in accordance with L.R. 16-2.7. For this purpose the following depositions shall be lodged with the Clerk as required by L.R. 32-1.

- (a) Carol Orlowsky
- (b) Vrena Ranallo
- (c) Robert Phillips

Plaintiff/Defendant objects to the presentation of testimony by deposition of the following witnesses:

Plaintiffs object to the testimony of Carol Orlowsky.

Defendant notes that following meet and confer, Plaintiffs determined that they would present the testimony of Ms. Ranallo and Mr. Phillips by deposition. Defendant has not yet received Plaintiffs' deposition markings; upon review, Defendant may cross-mark testimony and/or object thereto.

Defendant also objects to Plaintiffs' witness list to the extent that Ms. Karen Griffin of Impact Analytical is identified. Plaintiffs never disclosed Ms. Griffin in its initial disclosures or during discovery. *See* Defendant's Motion *in Limine*, no. 2 (Dkt. 147).

12. The following law and motion matters and motions in limine are pending:

- a. Motion in Limine Seeking Evidentiary Sanction of Issue Preclusion or Adverse Inferences at Trial.
- b. Defendant's Motion in Limine (1) to Exclude Plaintiffs' expert Donald May, Ph.D..
- c. Defendant's Motion in Limine (2) to Exclude Plaintiffs' expert Jeff McFadden.
- d. There is an outstanding discovery motion which Plaintiffs had filed (Dkt. 68, Plaintiffs' *Ex Parte* Application to Continue Scheduling Order), where no decision was reached.
- e. The parties agree that notice of certification must be sent to the class. Plaintiffs provided a form of class notice to defendants for review, and, are also working on a notice plan. Upon completion of the meet and confer process, Plaintiffs anticipate filing a motion. Defendant's position is that the trial should be continued to accommodate notice (*see* F.R.C.P. 23(c)(2)(B)); the parties are meeting and conferring on this issue.

13. Bifurcation of the following issues for trial is ordered:

The punitive damages and UCL claim will be bifurcated. All claims except for these will be heard first by the jury; then the claim for punitive damages will be heard by the jury; and then the UCL claim will be heard by the district court.

14. The forgoing admissions having been made by the parties and the parties having specified the foregoing issues remaining to be litigated, this Final Pretrial Conference Order shall supersede the pleadings and govern the course of the trial of this cause unless modified to prevent manifest injustice.

1 Dated:

2 _____
3 James V. Selna
4 UNITED STATES DISTRICT JUDGE

5 Dated: January 29, 2019

6 NYE, STIRLING, HALE & MILLER, LLP

7 By: /s/
8 Jonathan D. Miller, Esq.
9 Alison M. Bernal, Esq.

10 Dated: January 29, 2019

11 CARLSON LYNCH SWEET
12 KILPELA & CARPENTER, LLP

13 By: /s/
14 Ed Kilpela, Esq.

15 Dated: January 29, 2019

16 THE SULTZER LAW GROUP P.C.

17 By: /s/
18 Adam Gonnelli, Esq.

19 Dated: January 29, 2019

20 WALSH, LLC

21 By: /s/
22 Bonner Walsh, Esq.

23 *Attorneys for Plaintiffs and the Class*

24 Dated: January 29, 2019

25 SHEPPARD, MULLIN, RICHTER &
26 HAMPTON, LLP

27 By: /s/ Sascha Henry
28 Sascha Henry, Esq.
Abby H. Meyer, Esq.

Attorneys for Defendant Younique, LLC

29 Local Rule 5-4.3.4 Certification: I hereby attest that all other signatories listed, on
30 whose behalf this filing is submitted, concur in the filing's content and have authorized
31 this filing.

/s/

Alison M. Bernal